

## Department of Homeland Security

## § 208.21

asylum application, in accordance with § 208.14(b) or (c), shall be communicated in writing to the applicant. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision to grant or deny asylum, or to refer an asylum application unless, in the discretion of the asylum office director, service by mail is appropriate. A letter communicating denial of asylum or referral of the application shall state the basis for denial or referral and include an assessment of the applicant's credibility.

[65 FR 76136, Dec. 6, 2000]

### § 208.20 Determining if an asylum application is frivolous.

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.

[64 FR 8492, Feb. 19, 1999. Redesignated at 65 FR 76136, Dec. 6, 2000]

### § 208.21 Admission of the asylee's spouse and children.

(a) *Eligibility.* In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum, unless it is determined that the spouse or child is ineligible for asylum under section 208(b)(2)(A)(i), (ii), (iii), (iv) or (v) of the Act for applications filed on or after April 1, 1997, or under § 208.13(c)(2)(i)(A),

(C), (D), (E), or (F) for applications filed before April 1, 1997.

(b) *Relationship.* The relationship of spouse and child as defined in sections 101(a)(35) and 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the asylee proves that the asylee is the parent of a child who was born after asylum was granted, but who was *in utero* on the date of the asylum grant, the child shall be eligible to accompany or follow-to-join the asylee. The child's mother, if not the principal asylee, shall not be eligible to accompany or follow-to-join the principal asylee unless the child's mother was the principal asylee's spouse on the date the principal asylee was granted asylum.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's application, the asylee may request accompanying or following-to-join benefits for his/her spouse or child by filing for each qualifying family member a separate Form I-730, Refugee/Asylee Relative Petition, and supporting evidence, with the designated Service office, regardless of the status of that spouse or child in the United States. A recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes. Additionally, a separate Form I-730 must be filed by the asylee for each qualifying family member before February 28, 2000, or within 2 years of the date in which he/she was granted asylum status, whichever is later, unless it is determined by the Service that this period should be extended for humanitarian reasons. Upon approval of the Form I-730, the Service will notify the asylee of such approval on Form I-797, Notice of Action. Employment will be authorized incident to status. To demonstrate employment authorization, the Service